



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 174362

PRELIMINARY RECITALS

Pursuant to a petition filed on May 11, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services regarding Medical Assistance (MA), a hearing was held on July 5, 2016, by telephone.

The issue for determination is whether the agency correctly determined petitioner's liability for medical assistance overpayment claims # [REDACTED], [REDACTED], and [REDACTED] in the total amount of \$4,199.12.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.

DISCUSSION

The department “may” recover any overpayment of medical assistance that occurs because of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665 [BadgerCare].
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

Wis. Stat. § 49.497(1).

Recipients must report any change of income or other circumstances that affects their benefits to the agency by the 10th day of the month following the change. *BadgerCare Plus Eligibility Handbook*, § 27.3. The agency contends that petitioner did not report income from [REDACTED] and from [REDACTED]. The agency asserts that the husband’s income should have been reported by October 10, 2013. Thereafter the adults in the household were no longer eligible for MA. Petitioner’s income as of January 2014 increased the household income even more and would have resulted in premiums being due for the children. The petitioner does not dispute any of the income or the calculations of the agency.

At hearing, petitioner’s husband explained that he became employed and would have employer-sponsored insurance through Blue Cross/Blue Shield, with an \$800 premium, beginning in November 2013. He explained that petitioner reported this information to the agency and that he no longer needed BC+ for the household. Petitioner stated that she called 1-888-794-5747 in October 2013 to report the new insurance. Petitioner stated that she was told by the BC+ representative that the children could remain on the case for a minimal \$44 premium and that the adults would be removed from the case. Petitioner stated that she

The agency representative offered in rebuttal the observation that the case comments do not reflect a phone contact in October 2013. But, notably, he did observe that with the increased income from the [REDACTED] job a \$44 premium to keep the kids on the case appeared to be “fairly accurate.”

The crux of this case for me is whether petitioner reported the increased income. If she did report it, then any failure to include the change in the case is likely not a client error. If she did not report the income from [REDACTED], then I could find that client error led to the overpayment. I conclude that the whole of the record supports the contentions of petitioner. First, if the family were paying \$800 per month for employer insurance there is little reason to maintain BC+. Second, the details of the conversation in October appear credible and are corroborated by the accuracy of the \$44 premium for the kids. This would have been the amount if the income were reported. I don’t believe that petitioner would have thought to fabricate this part of a conversation with a representative. Finally, the burden in an overpayment case is on the agency. While the agency’s case was meritorious, it simply was not strong enough to overcome the credible and logical assertions of petitioner’s rebuttal. The agency would need to establish client error in order to prevail as overpayments caused by agency errors are not recoverable.

CONCLUSIONS OF LAW

The agency did not establish that an overpayment was due to client error.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to reverse overpayment claims # [REDACTED], [REDACTED], and [REDACTED] in the total amount of \$4,199.12. The agency shall cease collection efforts and refund any sums already recouped. These actions shall be completed within 10 days.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 5th day of August, 2016

\s _____
John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 5, 2016.

Brown County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability